

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

BEVERLY RODRIGUEZ,

Plaintiff,

v.

15cv681 WPL/LF

JEFFREY SMITH,

Defendant.

**ORDER PERMITTING PLAINTIFF LEAVE TO AMEND
HER RESPONSE TO COMPLY WITH LOCAL RULE 56.1(b)**

This matter comes before the Court *sua sponte*. Defendant Jeffrey Smith filed a Motion for Summary Judgment on the Basis of Qualified Immunity. (Doc. 28.) Plaintiff Beverly Rodriguez filed a Response (Doc. 37), and Smith filed a Reply (Doc. 41).

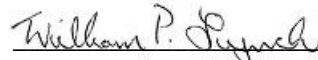
Rodriguez's Response, however, does not entirely comply with D.N.M.LR-Civ. 56.1(b), which states, among other things, that "[t]he Response may set forth additional facts other than those which respond to the Memorandum which the non-movant contends are material to the resolution of the motion. Each additional fact must be lettered and must refer with particularity to those portions of the record upon which the non-movant relies." Rodriguez did not include this stand-alone additional fact section. Instead, she raised her additional facts throughout the body of her Response.

Smith argues that, given Rodriguez's omission, "[t]he Court should not consider the additional 'facts' stated in [Rodriguez's] Response." (Doc. 41 at 8.) This result seems harsh given the importance of the plaintiff's version of the facts in a motion for summary judgment based on qualified immunity. *See United States ex rel. Precision Co. v. Koch Indus.*, 31 F.3d 1015, 1018 (10th Cir. 1994) ("The Federal Rules reject the approach that pleading is a game of skill in which

one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits.” (internal quotations omitted)).

Rodriguez shall have fourteen days from entry of this Order to file a revised response that complies with D.N.M.LR-Civ. 56.1(b). Smith shall have fourteen days from service of Rodriguez’s revised response to file a reply. If Rodriguez does not timely file a revised response, I will rule on Smith’s motion using the briefs currently before the Court.

IT IS SO ORDERED.



William P. Lynch
United States Magistrate Judge